

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Order Approving Proposed Qualifying Facility Contract Amendments, Agreements and Certain Amendments thereof Executed After July 31, 2001; and Authorizing Edison's Recovery of Payments Under the Proposed Contract Agreements and Amendments.

Application 02-01-035

**ADMINISTRATIVE LAW JUDGE'S RULING
REQUESTING FURTHER INFORMATION**

This ruling requests further information from Southern California Edison Company (Edison) regarding its Application (A.) 02-01-035 (Application) to justify its request for Commission approval of amendments and agreements (Agreements) concerning certain qualifying facilities projects (QFs).

Background

Edison filed A.02-01-035 seeking expedited, ex parte Commission approval of 15 proposed QF Agreements on January 25, 2002.¹ Edison states the Agreements are intended, among other things, to resolve disputes between Edison and various QFs arising as a result of suspension of energy payments

¹ One additional QF agreement is the subject of a separate application, A.01-11-033, adopted by D.02-04-014. However, Edison requests approval of the Changed Circumstances Amendment for this QF agreement.

during November 2000 through March 2001. Edison contends these Agreements are substantially based upon agreements approved by the Commission to resolve disputes with other QFs. Edison states it was unable to enter into these Agreements by the Safe Harbor Date,² and therefore it filed this application seeking approval of the Agreements and authorization to recover payments made under the Agreements.

On March 15, 2002, Edison sent a letter stating that it had made a series of payments representing substantially all of its outstanding, past due indebtedness, including payment to its QF creditors, for electricity deliveries during the period of the Payment Suspension (November 2000 to March 2001). This letter also states that Edison has entered into interim agreements³ providing a full release of all Payment Suspension-related claims in return for the payments which were made on March 1, 2002.

On March 22, 2002, I issued a ruling requesting supplemental information regarding the Application. That ruling requests information or analysis justifying the payment of higher energy costs under the Agreements, including information or analysis concerning Edison's estimate of litigation risk.

On April 23, 2002, Edison filed a Response to Administrative Law Judge's Ruling Requesting Supplemental Information in Support of Application (Response). The Response provides a quantitative analysis of the ratepayer

² The Safe Harbor Date is defined in Decision (D.) 01-09-021 as July 31, 2001. As provided in D.01-09-021, the Commission limited its prior approval to agreements entered into on or before July 31, 2001. Amendments or agreements entered into after July 31, 2001 require a separate application for approval as stated in D.01-10-069 (p. 11).

³ Conditional Release and Waiver.

impact of payments under the current short-run avoided cost (SRAC) transition formula and under the proposed Agreements. This analysis shows that under the Agreements ratepayers would pay approximately \$8.4 million more than under the current SRAC transition formula. Edison also provided an analysis comparing energy payments under the Agreements with projected payments using the California Cogeneration Council's (CCC) proposed methodology in the current phase of the Section 390 Rulemaking (R.99-11-022). This analysis shows that projected energy payments under the Agreements would be approximately \$9.6 million less than payments under the CCC proposed methodology. Edison's Response also discusses other information pertinent to the reasonableness of the Agreements.

On May 16, 2002, Edison sent a letter to Commissioners Carl Wood and Geoffrey Brown, and myself stating that effective May 9, 2002, the agreement with one of the QFs included in Edison's Application was terminated,⁴ and that eight other agreements will terminate automatically with the expected expiration of the termination date within the agreements.⁵

The termination or the expected termination of these nine agreements indicates that three agreements⁶ remain for which Edison is requesting Commission approval of energy costs above current SRAC prices.

⁴ U. S. Borax Inc. (QFID 2019).

⁵ These agreements terminate if there is no Commission approval by June 1, 2002. Edison states that Commission Approval means a decision is not subject to further appeal.

⁶ Ontario (QFID 2037) and Orange County Sanitation District (QFID 1098 and 2460).

Edison's Response (April 23, 2002), although providing descriptions of existing or potential litigation risk, did not provide any quantification or cost estimates of existing or potential litigation risk regarding the Agreements. Furthermore, since the March 15 letter indicates that payments were made to QF creditors, it is unclear what other costs of litigation risk should be considered by the Commission.

Therefore, this ruling requests Edison to provide further information regarding the litigation risk associated with the QF Agreements. This information should include cost estimates of litigation risk, and any other pertinent assumptions or analysis regarding litigation risk. Edison may limit its information to those agreements for which Edison continues to request Commission approval.

Edison states that expedited approval of the application is requested. Therefore, Edison is requested to file this information by May 26, 2002.

Therefore, **IT IS RULED** that:

1. Additional information is required to justify Southern California Edison Company's (Edison) Application 02-01-035.

2. Edison shall provide further information or analysis concerning its estimate of the costs of litigation risk as discussed in this ruling.

3. Edison shall provide any further information by May 26, 2002.

Dated May 17, 2002, at San Francisco, California.

/s/ BRUCE DEBERRY

Bruce DeBerry
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Requesting Further Information on all parties of record in this proceeding or their attorneys of record.

Dated May 17, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.